IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.R No.82 of 2007

Decided on : June 26, 2007

Raj Kanwar and another **....Petitioners.**

VERSUS

State of H.P. **....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the petitioners : Mr. G.C. Gupta, Senior Advocate, with Mr. Mohinder Gautam, Advocate.

For the respondent : Mr. Ashok Chaudhary, Additional Advocate General.

Surjit Singh, Judge (Oral)

Revision petitioners have been convicted of offences punishable under Sections 341, 353 and 506 (first part), read with Section 34 IPC, for allegedly wrongfully restraining PW-6 Prabha Rajeev while she was going in a Gypsy, and then assaulting her while she was on government duty and also threatening her with dire consequences. The incident allegedly took place on 15.7.1997 when PW-6 Prabha Rajeev, then working as Block Development Officer, Mashobra, was allegedly going to attend some meeting in the office of the Deputy Commissioner, Shimla. The revision petitioners, who were riding a scooter, allegedly overtook the Gypsy by which PW-6 Prabha Rajeev was travelling. The scooter was being driven by petitioner No.2 Dheeraj Kanwar and petitioner No.1 Raj Kanwar was

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Whether the reporters of the local papers may be allowed to see the Judgment?

riding the pillion. After overtaking, the scooter stopped in front of the Gypsy. Petitioner No.1 got down from the scooter and went up to the Gypsy. He required PW-6 Prabha Rajeev to reverse her vehicle and follow the scooter. He also made gestures indicative that he was about to use force. Matter was reported to the police. Besides Prabha Rajeev, some other government servants were also accompanying her.

2. Trial Court on conclusion of trial held the petitioners guilty of the aforesaid offences but released them after admonition and ordered them to pay costs of proceedings to the tune of Rs.2,000/- each.

3. Appeal was carried to the Sessions Court by the revision petitioners. Learned Additional Sessions Judge, Shimla, who heard the appeal, has dismissed the same.

4. Following submissions have been made by the learned counsel representing the revision petitioners:

i) There is no evidence indicting that PW-6 Prabha Rajeev was on government duty and was going to attend some meeting in the office of Deputy Commissioner.

ii) There is no evidence that Prabha Rajeev was assaulted.

iii) There is no evidence of any intimidation.

iv) There is no evidence of wrongful restraint.

v) There is no evidence of common intention between the two revision petitioners.

vi) No independent witness has been produced by the prosecution.

vii) There was a Constable on the spot but no report was made to him about the alleged incident.

5. I have heard the learned counsel for the revision petitioners and perused the judgments of the two Courts below.

Submission No.(i)

6. The Appellate Court has dealt with this aspect of the matter from two angles. Firstly, it has been held that the oral evidence proves that PW-6 Prabha Rajeev was going to the Office of Deputy Commissioner by a Government vehicle to attend a meeting. The trial Court has, in its judgment, pointed out that PW-6 Prabha Rajeev specifically stated that she was going to attend a meeting in the Office of the Deputy Commissioner. When there is categorical statement of the complainant to this effect and there was no reason to disbelieve the same. No fault can be found with the finding of the trial Court that she was going to attend a meeting.

7. In any case, it has come in the evidence and the first Appellate Court has also noticed that PW-6 Prabha Rajeev was assaulted because of her having done an act in the discharge of her duties as a public servant and, therefore, the matter is covered by Section 353 IPC. On this count also, the view taken by the learned Additional Sessions Judge is legally correct. Hence, the first submission is without merit.

Submission No.(ii)

8. Judgment of the trial Court shows that petitioner No.1, after alighting from the pillion of the scooter went to PW-6 Prabha Rajeev when she was sitting in the Gypsy and made certain gestures

suggesting that he was about to assault her. This act of petitioner No.1 falls within definition of 'assault' appearing in Section 351 IPC. Hence, this submission is also without merit.

Submission No.(iii)

9. PW-6 Prabha Rajeev, as per judgment of the trial Court, specifically stated that she was intimidated by petitioner No.1. In view of this factual position, the submission is rejected.

Submission No.(iv)

10. It has come in the evidence of the prosecution that the scooter, which the petitioners were riding, overtook and stopped in front of the Gypsy, meaning thereby that the occupants of the Gypsy were not allowed to proceed in the direction they were going. Petitioners' act, thus, clearly falls within the mischief of Section 339 IPC which defines the offence of wrongful restraint. The act is punishable under Section 341 IPC.

Submission No.(v)

11. It has come in evidence that PW-6 Prabha Rajeev was working as Block Development Officer at the relevant time. She had got executed work of construction of a path. The revision petitioners were aggrieved by that act and it was because of that act that they intimidated and assaulted her. Both the revision petitioners were travelling by the same scooter. Petitioner No.2 was driving the scooter and petitioner No.1 was riding the pillion. Petitioner No.2 after overtaking the Gypsy stopped the scooter in front of the Gypsy. Thereafter, petitioner no.1 alighted from the scooter and went to the point where the Gypsy had stopped and assaulted and intimidated

PW-6 Prabha Rajeev. The chain of events, i.e. overtaking of the Gypsy by the scooter, which was being driven by petitioner No.2, and the stopping of the scooter in front of the Gypsy by petitioner No.2, is indicative of the fact that the two revision petitioners had pre-meeting of minds. Therefore, this submission is also rejected.

Submission No.(vi)

12. It is true that no independent witness of the incident has been examined. The incident had taken place on a public road. It was after the revision petitioners withdrew from the spot that the complainant could proceed further. From there she went to the Police Station and lodged the report. By the time police started the investigation, all those persons, who might have witnessed the incident, were supposed to have gone away, as they were supposedly passers-by. Hence, this submission is also without merit.

Submission No.(vii)

13. It is true that some witnesses have stated that a Policeman always remains on duty at the site where the incident took place, but he is supposed to be a Traffic Constable and in any case he is not supposed to be having requisite stationery for recording the complaint, even though he may be empowered to take cognizance. Hence, this submission is also unacceptable. In any case non-reporting of the matter to that Constable by itself does not make the prosecution version doubtful.

14. As a result of the abovestated position, revision petition is dismissed.

June 26, 2007(sd) **(Surjit Singh), J.**